

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RANDY MURPHY,
Plaintiff,

No. C 04-03062 TEH

v.

CITY OF OAKLAND,
Defendant.

**ORDER RE DEFENDANTS'
PROPOSED EXCERPTS FROM THE
DEPOSITION OF NOAH
MONTGOMERY**

The Court makes the following rulings with respect to Plaintiff's objections to Defendants' proposed excerpts from Noah Montgomery's deposition:

1. Page 17: 5-16.

Hearsay objection is sustained without prejudice to Defendants showing in advance of introduction of deposition testimony that the testimony at issue is not being offered for the truth of the statement asserted or that it falls within an exception to the hearsay rule.

2. Page 35:5-18:

Objection overruled. The testimony at issue constitutes an admission by party-opponent under Fed. Rule Evid. 801(d)(2), and thus is not hearsay. Plaintiff's contention that the testimony is conclusory, speculative, etc. goes to the weight of the evidence.

3. Page 38:15-19

Objection overruled. The Court has not ruled that all testimony from Creed Morris is inadmissible, just the specific testimony set forth in the Court's ruling on in limine motions. Further, the testimony at issue does not relate to the contents of the "letter of advisement" and thus does not implicate the hearsay rule.

4. Page 44:19-45:1; 45:17-29

Objection overruled. The testimony does not relate to the contents of the "letter of advisement" and thus does implicate the hearsay rule.

5. Page 47:17-20

Hearsay objection overruled. The testimony does not involve any out of court statement.

6. Page 47:21-24.

Hearsay objection sustained without prejudice to Defendants demonstrating in advance of introduction of deposition testimony that the testimony is not being offered for the truth of the matter asserted.

7. Page 50:19-51:9; 51:22-53:3

Hearsay objection overruled. The testimony constitutes an admission by a party-opponent. This ruling does not address the admissibility of any other aspects of the "letter of advisement." Plaintiff may supplement with page 53:4-6 as requested.

8. Page 55:1-17

Hearsay objection sustained. Montgomery can not recall if the statements were told to him by McGiffert or plaintiff. As such, Defendants can not establish that the statements constitute an admission by a party opponent.

IT IS FURTHER ORDERED that Defendants shall file any objections to Plaintiff's counter designations no later than Thursday, November 17, 2005.

IT IS SO ORDERED.

Dated: November 16, 2005



THELTON E. HENDERSON
UNITED STATES DISTRICT JUDGE